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Senate Bill _____
By _____

House No. HB1182
By Jones

AN ACT to authorize the creation of port authorities by certain local governments and to provide for the port authority's powers and duties, and to enact related provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as the Municipal Port Authority Act.

SECTION 2. It is declared that a clear need exists in municipal areas of Tennessee for improved transportation and navigation for the movement and transportation of people, goods and merchandise, and for the creation of expanded employment opportunities through the promotion of commerce and industry, with minimal pollution, which require that municipal areas have the option of placing the central operation and financing of municipal port and development agencies within municipal instrumentalities, and that these instrumentalities have the authority to acquire from the state, or other owners, real and personal property and to develop, manage and operate it for economic and industrial development. It is declared that port authorities created pursuant to this act are public and governmental bodies acting as agencies and instrumentalities of the creating and participating municipalities; and the acquisition, operation, financing and disposal of ports, lands, industrial and other related

facilities are declared to be for a public and governmental purpose and a matter of public necessity. The property and revenues of the authority or any interest therein shall be exempt from all state, county and municipal taxation.

SECTION 3. As used in this act, unless the context otherwise requires:

- (1) "Authority" means a municipal port authority created pursuant to the provisions of this chapter;
- (2) "Board" means the board of commissioners of an authority;
- (3) "Bonds" includes notes, interim certificates or other obligations of an authority;
- (4) "Contracting party" or "other contracting party" means any party to a sale contract, lease, or loan agreement except the authority;
- (5) "Creating municipality" or "municipality" means any municipality with a population greater than 550,000 according to the latest federal census.
- (6) "Enterprise" means the manufacturing, processing, assembling, and commercial service operations to be carried on with or otherwise using the facilities of a project;
- (7) "Executive officer" means the mayor of any creating municipality;
- (8) "Governing body" means the chief legislative body of any creating municipality;
- (9) "Lease" includes a lease containing an option to purchase the project for a nominal sum upon payment in full or provision therefor, of all bonds issued in connection with the project and all interest thereon and all other expenses in connection with the project, and a lease containing an option to purchase the project at any time, as provided therein, upon payment of the purchase price which shall be sufficient to pay all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, but which payment may be made in the form of one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee providing for time payments,

including, without limitation, interest thereon sufficient for such purposes and delivered to the corporation or to the trustee under the indenture pursuant to which the bonds were issued;

- (10) "Loan agreement" means an agreement providing for an authority to lend the proceeds derived from the issuance of bonds pursuant to this act to one (1) or more contracting parties to be used to pay the costs of one (1) or more projects and providing for the repayment of the loan by the other contracting party or parties, and which may provide for the loans to be secured or evidenced by one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued;
- (11) "Pollution" means the placing of any noxious or deleterious substances, including noise, in any air or water of or adjacent to the state of Tennessee or affecting the physical, chemical or biological properties of any air or water of or adjacent to the state of Tennessee in a manner and to an extent that renders or is likely to render the air or waters inimical or harmful to the public health, safety or welfare, or to any animal, bird or aquatic life, or to the use of the air or waters for domestic, industrial, agricultural or recreational purposes;
- (12) "Pollution control facilities" means any equipment, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith having to do with or the end purpose of which is the control, abatement or prevention of water, air, noise or general environmental pollution, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, wastewater collecting systems, wastewater treatment works, or solid waste disposal facility;

(13) "Port" means a terminal facility with all associated components necessary for the loading and unloading of goods and people involved in inland waterway transport and navigation;

(14) (A) "Project" means all or any part of, or any interest in:

(i) Any land and building (including office building), and facility or other improvement thereon, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, that is suitable for the following or any combination of two (2) or more thereof: any industry for the manufacturing, processing or assembling of any agricultural, mining, or manufactured products; any commercial enterprise in selling, providing, or handling any financial service or in storing, warehousing, distributing or selling any products of agriculture, mining, or industry; any undertaking involving the use of ship canals, ports or port facilities, off-street parking facilities, docks or dock facilities, or harbor facilities, or of railroads, monorail or tramway, railway terminals, or railway belt lines and switches; all or any part of any office building or buildings for the use of any tenant or tenants determined or authorized by the board, including, without limitation, any industrial, commercial, financial or service enterprise, any nonprofit domestic corporation or enterprise now or hereafter organized, whose purpose is the promotion, support and encouragement of either agriculture or commerce in this state or whose purpose is the promoting of the health, welfare and safety of the citizens of the state; any office or other public building for any municipality, or any board of public utilities, or any public authority, agency or instrumentality of the state of Tennessee or of the United States; any buildings, structures and facilities, including the site thereof, machinery, equipment and furnishings, suitable for use by any municipality as health care or related facilities including, without limitation, hospitals, clinics,

nursing homes, research facilities, extended or long-term care facilities, and all buildings, structures and facilities deemed necessary or useful in connection therewith; any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including, but not limited to, classroom, laboratory, housing, administrative, physical education, and medical research and treatment facilities; any planetarium and/or museum; any facilities for any recreation or amusement park, public park or theme park suitable for use by any private corporation or any governmental unit of the state of Tennessee, including the state of Tennessee; but does not include facilities designed for the sale or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, except those herein specifically included; and

(ii) Any pollution control facilities that are suitable for use by any of the foregoing or by any public utility whether publicly or privately owned, board of public utilities, public authority, or agency or instrumentality of the state of Tennessee or the United States, or by any combination of two (2) or more thereof.

(B) The board shall find with respect to any office building financed under

the provisions of this chapter that the acquisition and leasing or sale of the building, or the financing thereof by loan agreement, as the case may be, will develop trade and commerce in and adjacent to the municipality, will contribute to the general welfare and will alleviate conditions of unemployment, and this finding by the board is conclusive;

- (15) "Revenues" of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes,

debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as herein provided;

- (16) "Sale contract" means a contract providing for the sale of one (1) or more projects to one (1) or more contracting parties and includes a contract providing for payment of the purchase price in one (1) or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the authority or to the trustee under the indenture pursuant to which the bonds were issued one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties providing for timely payments, including, without limitation, interest thereon for the balance of the purchase price at or prior to the passage of title; and

- (17) "State means the state of Tennessee.

SECTION 4.(a) Any municipality may create a metropolitan port authority in the manner hereinafter provided.

(b) The governing body of the creating municipality, if it determines the public convenience and necessity requires the creation of a metropolitan port authority, shall adopt, and the executive officer of the creating municipality shall approve, a resolution so declaring and creating an authority. The resolution shall designate the name and principal office address of the authority. A certified copy of the resolution shall be filed with the secretary of state and with the commissioner of transportation, and upon the adoption and filing, the authority shall constitute a body politic and corporate, with all the powers hereinafter provided. A copy of the resolution shall also be filed with the department of community and economic development, or its functional successor. The authority created supersedes and takes the place of any port commission in which the municipality participates. All property, rights, choses in action, funds,

assets, and liabilities shall be transferred by the commission and vested in the authority upon the authority's creation.

SECTION 5. (a) The governing power of the authority shall be vested in a board of commissioners of nine (9) persons, each of whom shall have no financial interest in the authority or its concessions, appointed by the executive officer of the creating municipality and confirmed by resolution of its governing body. All commissioners shall be of excellent character and reputation and any commissioners appointed from the fields of finance, industry or commerce, and real estate shall be eminently qualified in their fields of endeavor and shall possess all necessary licenses enabling them to practice their professions in Tennessee.

(b) Terms of office for the commissioners shall be as follows: the term of the first two (2) commissioners confirmed shall be one (1) year, for the second two (2) commissioners confirmed, two (2) years and for the last five (5) commissioners confirmed, three (3) years, but the succeeding commissioners shall be appointed for a term of three (3) years. In the event of a failure to appoint or confirm a successor to any member of the board, the commissioner whose term has expired shall continue to serve until such commissioner's successor has been duly confirmed as herein provided, but in no event for longer than one (1) year after such commissioner's term has expired. In the event of a vacancy on the board by reason of nonresidence, incapacity, resignation or death, a successor shall be appointed and confirmed as hereinbefore provided, and within one (1) year after the vacancy occurs. A commissioner may be removed from office by a two-thirds (2/3) vote of the governing body of the creating municipality, but only after notice of the cause of the removal has been served upon the commissioner, and only after the commissioner has been granted an opportunity for a public hearing.

(c) Before entering upon their duties, all commissioners shall take and subscribe to an oath of office as provided by law for municipal officers. Copies of the oath of each commissioner shall be filed with the clerk of the creating municipality.

(d) Any person of at least twenty-one (21) years of age and who has resided within the creating municipality for a period of at least one (1) year immediately preceding the person's confirmation by the governing body shall be eligible to serve as a member of the board. Any commissioner who ceases to reside within the creating municipality shall automatically be ineligible to serve in the office as of the date the commissioner ceases to reside within the municipality. Cessation of residence within the creating municipality constitutes a resignation from the board.

(e) The board shall elect from among its members a chair, vice chair and any other such officers it may in its bylaws determine are necessary. Five (5) of the commissioners shall constitute a quorum for the transaction of business. The board shall hold regular meetings at least once every three (3) months, and at a regular time and place determined by resolution or bylaw; additional and/or special meetings may be held as determined by the board.

(f) Commissioners shall receive no salary, but shall be reimbursed for necessary expenses incurred in the performance of their official duties by the authority or by appropriation of the governing body.

(g) Except as herein expressly otherwise specified, all power herein granted to an authority shall be exercised by the board.

SECTION 6. The board shall appoint a port authority manager who shall be the chief executive and administrative officer of the authority, and shall enter into a contract with the manager establishing the salary and term of office. The manager shall appoint all other officers and other employees subject to any civil service plan adopted by the board. The port authority manager shall prepare an annual operating budget of the authority and submit it to the board for approval at least sixty (60) days prior to the beginning of the fiscal year. If the budget has not been acted upon by the board on the first day of the fiscal year, it shall then automatically go into effect. The manager shall also submit any periodic reports the board directs. The manager shall attend all meetings of the board.

SECTION 7. An authority has all powers necessary to accomplish the purposes of this chapter (excluding the power to levy and collect taxes and special assessments) including, but not limited to, the power to:

(1) Have perpetual succession, sue and be sued, and adopt a corporate seal;

(2) Acquire, construct, purchase, operate, maintain, replace, repair, rebuild, extend, and improve within the boundaries of the creating municipality and in contiguous counties so long as the governing body of those counties grants its concurrence and agreement, ports and any and all other related facilities, equipment, projects and appurtenances necessary or convenient for the promotion of industrial development, commerce and recreation and for the improvement of the access to all channels of commerce, and make such facilities available to any firm, person, public or private corporation, to any other shipper, consignee, or carrier, and charge for their use and for any and all services performed by the authority; provided, that nothing in this act gives the authority the power or the duty to construct, purchase, operate, maintain, replace, repair, rebuild, extend and improve any public-use freight port or terminal; and provided further, that the powers granted by this subdivision shall be exercised only over lands acquired by the authority pursuant to the powers granted in this act;

(3) Issue and sell bonds payable solely out of the revenue and receipts derived from the authority's projects or from any thereof that are designed in the proceedings of the authority commissioners under which the bonds are authorized to be issued, including debt obligations of the lessee, devisee, or contracting party obtained from or in connection with the financing of a project;

(4) Borrow money from banks and other financial institutions by issuing its notes for the purpose of carrying out any of its powers;

(5) As security for the payment of the principal of and interest on any bonds or notes so issued and any agreements made in connection therewith, mortgage and pledge any or all of its projects, or any part of parts thereof, whether then owned or thereafter acquired, and pledge the

revenues and receipts therefrom, or from any part thereof, and/or assign and pledge all or any part of, its interest in and rights under the leases, sale contracts or loan agreements relating thereto or to any part thereof;

(6) Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign-trade zones within the limits of the port authority and establish, operate, and maintain foreign-trade zones;

(7) Authorize the application for and establishment, operation and maintenance of foreign-trade subzones outside the limits of the port authority through the authority's foreign-trade zone upon the request of any party and the approval of a majority of the legislative body in the county or municipality in which the requesting party is located;

(8) Accept donations to the authority of cash, lands or other property to be used in the furtherance of the purposes of this act;

(9) Accept grants, loans, or other financial assistance from any federal, state, county, or municipal agency, or in aid of the acquisition or improvement of the administration and operation of any of the facilities herein provided for;

(10) Purchase, rent, lease or otherwise acquire and dispose of any and all kinds of property, real, personal or mixed, tangible or intangible, and whether or not subject to mortgages, liens, charges, or other encumbrances, which, in the judgment of the authority commissioners, is necessary or convenient to carry out the powers herein granted. The authority herein granted to acquire property includes, but is not limited to, the acquisition of lands in the vicinity of the port and terminal facilities provided for herein, and giving priority for the use of such lands to projects requiring access to inland waterways in their operations;

(11) Make contracts and execute instruments containing such covenants, terms and conditions, as in the judgment of the commissioners, are necessary, proper or advisable for the purpose of obtaining grants, loans, or other financial assistance from any federal or state agency, for or in aid of the acquisition or improvement of the facilities herein provided for; make

all other contracts and execute all other instruments including, without limitation, licenses, long- or short-term leases, deeds, mortgages and deeds of trust, and other agreements relating to property and facilities under its jurisdiction, and the construction, operation, maintenance, repair, and improvement thereof, as in the judgment of the board are necessary, proper, or advisable for the furtherance of the purposes of this chapter, and the full exercise of the powers herein granted; and carry out and perform the covenants, terms, and conditions of all such contracts or instruments.

(12) Enter upon any lands, waters, and premises for the purpose of making surveys, soundings, and examination in connection with the acquisition, improvement, operation, or maintenance of any of the facilities herein provided;

(13) Promulgate and enforce such rules and regulations as the board may deem proper for the orderly administration of the authority and the efficient operation of its facilities;

(14) Use in the performance of its functions the officers, agents, employees, services, facilities, records and equipment of the creating municipality, with the consent of municipality and subject to terms and conditions agreed upon; and

(15) Do all acts and things necessary, or deemed necessary or convenient to carry out the powers expressly given in this chapter.

SECTION 8. Any creating municipality, upon the written recommendation of the board, may acquire any interest in land within the boundaries of the creating municipality by gift, purchase, lease, or condemnation and may transfer such interest to an authority by sale, lease or gift. The transfer may be authorized by ordinance of the governing body of the creating municipality without submission of the question to the voters and without regard to the requirements, restrictions, or other provisions contained in any other general, special, or local law, with the exception of title 29. None of the foregoing interest in land transferred to an authority by any creating municipality may be acquired by eminent domain after the effective date of this act while the land is in use as residential dwellings.

SECTION 9. (a) The authority has the power to issue negotiable bonds from time to time in order to accomplish any of the purposes authorized by this act, and it also has the power to issue refunding bonds for the purposes, and in the amounts and manner provided in title 9, chapter 21. All such bonds shall be payable solely from all or any part of the revenues, income and charges of the authority and such bonds shall not constitute an obligation of the creating municipality, and the bonds shall so state.

(b) Such bonds shall be authorized by resolution of the board and shall bear such date, mature at such time or times, bear interest at such rate or rates payable annually or semiannually, be in such form and denominations, be subject to such terms of redemption with or without premium, carry such registration privileges, be payable in such medium and at such place or places, be executed in such manner, all as may be provided in the resolution authorizing the bonds. Such bonds may be sold at public or private sale in such manner and for such amount as the board may determine.

(c) The resolution may include any covenants with the bondholders deemed necessary by the board to make the bonds secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of the revenues of the authority; the creation and maintenance of reserves; the investment of funds; the issuance of additional bonds; the maintenance of minimum fees, charges and rental; the operation and maintenance of its port authority; insurance and insurance proceeds; accounts and audits; the sale of port authority properties, remedies of bondholders; the vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; the amendment of the resolution; and the appointment of a receiver in the event of a default.

(d) Any holder of any such bonds, including any trustee for any bondholders, may enforce their rights against the authority, its board or any officer, agent or employee thereof by mandamus, injunction or other action in any court of competent jurisdiction, subject to the covenants included in the bond resolution.

(e) All sums received as accrued interest from the sale of any bonds shall be applied to the payment of interest on the bonds. All sums received as principal or premium from the sale shall be applied to the purpose for which the bonds were issued, and may include, but without limitation, expenses for fiscal, legal, engineering and architectural services, expenses for the authorization, sale, and issuance of the bonds, expenses for obtaining an economic feasibility survey in connection with the bonds, and creating reserve for the payment of not exceeding one (1) year's interest on the bonds.

(f) Bonds issued pursuant to this act executed by officers in office on the date of execution shall be valid obligations of the authority, notwithstanding that before the delivery thereof any or all of the persons executing them have ceased to be officers.

(g) Bonds issued pursuant to this chapter, and the income therefrom, are exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes.

(h) All public officers and bodies of the state, municipal corporations, political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, all executors, administrators, guardians, trustees, and all other fiduciaries in the state may legally invest funds within their control in bonds of an authority.

SECTION 10. Employees other than independent contractors of the authority shall be considered employees of the creating municipality, and shall enjoy all rights and responsibilities as do other employees of the creating municipality, and shall be considered in classified and/or unclassified service as are all other employees of the creating municipality.

SECTION 11. Any creating municipality has all of the necessary powers in order to further the purposes of this act, including, without limitation, the following, any or all of which powers may be exercised by resolution of its governing body.:

(1) Advance, donate or lend money, raised from any source and by any means, or real or personal property to the authority;

(2) Provide that any funds on hand or to become available to it for port purposes shall be paid directly to the authority;

(3) Cause water, sewer, gas, electric or other utility service to be provided to the authority;

(4) Open and improve streets, roads and alleys to the port;

(5) Provide police and fire protection services to the port; and

(6) Pledge the full faith and credit and unlimited taxing power of the municipality as surety to the payment of the authority's bonds in accordance with the procedure for industrial development corporations as set out in §§ 7-53-306 and 7-53-307.

SECTION 12. Whenever the governing body of the creating municipality by resolution determines that the purposes for which the authority was created have been substantially accomplished, that all of the bonds and other obligations of the authority have been fully paid, then the executive officer of the creating municipality shall execute and file for record with the secretary of state a certificate of dissolution reciting such facts and declaring the authority to be dissolved. Upon such filing, the authority shall be dissolved, and title to all funds and other properties of the authority at the time of such dissolution shall vest in and be delivered to the creating municipality.

SECTION 13. (a) Except as otherwise provided in this act, the powers conferred by this act are in addition and supplemental to the powers conferred by any other law, and are not in substitution for such powers, and the limitations imposed by this chapter shall not affect those powers.

(b) The powers herein granted may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter, except as herein expressly provided.

(c) Any municipality authorized to create a municipal port authority may do so without the necessity of a charter amendment, notwithstanding anything in its charter to the contrary.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.